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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-184002

DATE: November 4, 1976

MATTER OF: John J. Lynch - Restoration of Annual
Leave Due to Administrative Error

DIGEST: Former employee appeals Claims Division action sustaining disallowance of his claim for restoration of forfeited annual leave. Administrative report obtained pursuant to 55 Comp. Gen. 784 states that claimant had been counseled prior to retirement concerning forfeiture of excess annual leave upon accepting temporary appointment immediately following retirement. Employee claims that he was not counseled until after forfeiture had occurred. Where, as here, no question of law is presented, but rather there exists dispute as to facts, GAO will not disturb administrative finding of fact, in the absence of substantive evidence overcoming such determination.

This action results from the appeal of Mr. John J. Lynch from our Claims Division action of June 18, 1976, which sustained the administrative disallowance of his claim for recredit of forfeited unused annual leave. The leave was forfeited incident to his retirement from the Department of the Army, effective December 31, 1974, and his temporary appointment effective January 1, 1975.

Mr. Lynch's claim was previously the subject of a decision of this Office, 55 Comp. Gen. 784 (1976). The digest of that decision is as follows:

"Employee retired effective December 31, 1974, and received a temporary appointment effective January 1, 1975, not to exceed June 30, 1975. Since there was no break in service, the employee's annual leave balance was transferred to his new appointment and he forfeited 80 hours of annual leave at end of leave year pursuant to 5 U.S.C. § 6304. Agency is requested to determine whether it violated mandatory requirement to advise employee he would forfeit annual leave if he accepted

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temporary appointment without break-in-service. If such violation occurred, leave is for restoration under 5 U.S.C. § 6304(d)(1)(A)."

In accordance with the cited decision our Claims Division requested an administrative report from the Army as to whether there was an administrative regulation which required that employees be counseled concerning an impending forfeiture of annual leave where an employee accepts a temporary appointment upon retirement without a break in service. In the administrative report, the Army stated the following:

"Mr. Lynch apparently sought, received, and relied upon information from sources outside the Personnel Office which later proved to be incorrect. Approximately two days before he retired Mr. Harrell [who occupied the position of Chief, Recruitment and Placement Branch at that time] learned of Mr. Lynch's leave situation and immediately advised him that he would forfeit leave if he remained on the rolls as a reemployed annuitant. Mr. Harrell further advised Mr. Lynch to remain off the rolls at least until the period of leave coverage ended. According to Mr. Harrell, Mr. Lynch replied that he had been told by other sources that he would not forfeit the leave and would check into the situation further himself. It is our understanding that Mr. Lynch was also advised by members of the Civilian Payroll Office that he would forfeit the leave."

Based upon the above report, our Claims Division sustained the prior denial of his claim by letter of June 18, 1976.

We note that in its administrative report the Army did not determine, as required by 55 Comp. Gen. 784, supra, whether there existed any requirement to counsel Mr. Lynch of the impending forfeiture under such circumstances. However, its finding that he had been counseled concerning the possibility of forfeiture of annual leave made such a determination unnecessary.

Mr. Lynch appealed the June 18, 1976, action sustaining the disallowance of his claim. He states that he was first counseled concerning the forfeiture of annual leave subsequent

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to January 21, 1975, after he had accepted the temporary appointment on January 1, 1975. He also states that he was not aware of the forfeiture until January 21, 1975, and that he had no contact prior thereto with either the Recruitment and Placement Branch or the Payroll Office concerning the matter. In addition, Mr. Lynch points out that the recent report is inconsistent with a prior report wherein the Army stated Mr. Lynch had not been advised regarding the forfeiture until January 1975.

It is obvious that the above circumstances present no question of law, but rather a question of fact. In circumstances such as this, where there exists a dispute as to facts between a claimant and an administrative body, we cannot set aside an administrative determination of fact in the absence of any substantive evidence overcoming such determination. See B-184608, May 4, 1976.

In this case the latest Army report, although inconsistent with its prior report, states that Mr. Lynch was counseled concerning the subject forfeiture prior to his retirement. It provides the name and position of the person who so counseled the claimant and a synopsis of the discussion. The administrative report constitutes substantive evidence which must be overcome by more than the unsupported statements offered by the claimant. Under such circumstances we may not set aside the Army's administrative report. Accordingly, Mr. Lynch's appeal is hereby denied.


Deputy Comptroller General
of the United States